



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R06-OAR-2012-0985; FRL-9944-84-Region 6]**

**Approval and Promulgation of Air Quality Implementation Plans; Texas; Interstate Transport of Air Pollution for the 2008 Ozone National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to disapprove the portion of a Texas State Implementation Plan (SIP) submittal pertaining to interstate transport of air pollution which will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone National Ambient Air Quality Standards (NAAQS) in other states. Disapproval will establish a 2-year deadline for the EPA to promulgate a Federal Implementation Plan (FIP) for Texas to address the Clean Air Act (CAA) interstate transport requirements pertaining to significant contribution to nonattainment and interference with maintenance of the 2008 ozone NAAQS in other states, unless the EPA approves a SIP that meets these requirements.

Disapproval does not start a mandatory sanctions clock for Texas.

**DATES:** Comments must be received on or before **[insert date 30 days from date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2012-0985, at <http://www.regulations.gov> or via email to [young.carl@epa.gov](mailto:young.carl@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information

(CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Carl Young, 214-665-6645, [young.carl@epa.gov](mailto:young.carl@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Carl Young, 214-665-6645, [young.carl@epa.gov](mailto:young.carl@epa.gov). To inspect the hard copy materials, please schedule an appointment with Mr. Young or Mr. Bill Deese at 214-665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” means the EPA.

## **I. Background**

On March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). The CAA requires states to submit, within three years after promulgation of a new or revised standard, SIPs

meeting the applicable “infrastructure” elements of sections 110(a)(1) and (2). One of these applicable infrastructure elements, CAA section 110(a)(2)(D)(i), requires SIPs to contain “good neighbor” provisions to prohibit certain adverse air quality effects on neighboring states due to interstate transport of pollution. There are four sub-elements within CAA section 110(a)(2)(D)(i). This action reviews how the first two sub-elements of the good neighbor provisions, at CAA section 110(a)(2)(D)(i)(I) were addressed in an infrastructure SIP submission from Texas for the 2008 ozone NAAQS. These sub-elements require that each SIP for a new or revised standard contain adequate provisions to prohibit any emissions activity within the state from emitting air pollutants that will “contribute significantly to nonattainment” or “interfere with maintenance” of the applicable air quality standard in any other state.

Ozone is not emitted directly into the air, but is created by chemical reactions between oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOCs) in the presence of sunlight. Emissions from electric utilities and industrial facilities, motor vehicles, gasoline vapors, and chemical solvents are some of the major sources of NO<sub>x</sub> and VOCs. Because ground-level ozone formation increases with temperature and sunlight, ozone levels are generally higher during the summer. Increased temperature also increases emissions of VOCs and can indirectly increase NO<sub>x</sub> emissions.<sup>1</sup>

The EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to ozone in several past regulatory actions. The NO<sub>x</sub> SIP Call, promulgated in 1998, addressed the good neighbor provision for the 1979 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS.<sup>2</sup> The rule required 22 states and the District of Columbia to amend their SIPs and limit NO<sub>x</sub> emissions that contribute to ozone nonattainment. The Clean Air

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<sup>1</sup> 80 FR 75706, 75711.

<sup>2</sup> NO<sub>x</sub> SIP Call, 63 FR 57371 (October 27, 1998).

Interstate Rule (CAIR), promulgated in 2005, addressed both the 1997 PM<sub>2.5</sub> and ozone standards under the good neighbor provision and required SIP revisions in 28 states and the District of Columbia to limit NO<sub>x</sub> and SO<sub>2</sub> emissions that contribute to nonattainment of those standards.<sup>3</sup> CAIR was remanded to the EPA by the D.C. Circuit in *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), *modified on reh'g*, 550 F.3d 1176. In response to the remand of CAIR, the EPA promulgated the Cross State Air Pollution Rule (CSAPR) on July 6, 2011, to address CAA section 110(a)(2)(D)(i)(I) in the eastern<sup>4</sup> portion of the United States.<sup>5</sup> With respect to ozone, CSAPR limited ozone season nitrogen oxide (NO<sub>x</sub>) emissions from electric generating units (EGUs). CSAPR addressed interstate transport as to the 1997 8-hour ozone NAAQS, the 1997 annual fine particulate matter (PM<sub>2.5</sub>) NAAQS and the 2006 24-hour PM<sub>2.5</sub> NAAQS, but did not address the 2008 8-hour ozone standard.

## **II. Texas SIP Revision Addressing Interstate Transport of Air Pollution for the 2008 Ozone NAAQS**

On December 13, 2012, Texas submitted a SIP revision addressing certain CAA infrastructure requirements for the 2008 ozone NAAQS. This action concerns the portion of the December 13, 2012, SIP submittal pertaining to the CAA section 110(a)(2)(D)(i)(I) requirement to address the interstate transport of air pollution which will significantly contribute to nonattainment or interference with maintenance of the 2008 ozone NAAQS in other states. In a separate action, we disapproved the portion of the SIP submittal pertaining to the CAA section 110(a)(2)(D)(i)(II) requirement to address the interstate transport of air pollution which will interfere with other states' programs for visibility protection (81 FR 296, January 5, 2016). We

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<sup>3</sup> Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005).

<sup>4</sup> When we discuss the eastern United States we mean the contiguous U.S. states excluding the 11 western states of Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming.

<sup>5</sup> Cross-State Air Pollution Rule (CSAPR), 76 FR 48208 (August 8, 2011).

proposed to approve the other portions of the infrastructure SIP submittal on February 8, 2016 (81 FR 6483).

In the portion of its SIP submittal addressing interstate transport, Texas provided an analysis of monitoring data, wind patterns, emissions data and emissions controls. Texas notes that, at the time of the SIP submittal, it had not yet implemented control measures in its two areas designated nonattainment for the 2008 ozone NAAQS because the nonattainment SIP was not due until 2015. Texas cited numerous control measures that were implemented to address prior ozone NAAQS. Texas also includes 1990-2010 design value data for the areas designated nonattainment for the 2008 ozone NAAQS in Texas and in nearby nonattainment areas and notes that design values have generally decreased since 2000. Texas focuses on wind patterns and the distance between in-state ozone nonattainment areas (Dallas-Fort Worth and the Houston-Galveston-Brazoria) and the closest designated nonattainment areas (Baton Rouge, Louisiana, and Memphis, Tennessee) in other states, and monitored data in between these areas. Texas concluded that it is difficult to determine how much ozone at the out-of-state nonattainment areas is due to transport of ozone and how much is due to other sources of ozone precursors.

Texas's analysis includes 2010 8-hour ozone design values from monitors in states located in the EPA Region 6.<sup>6</sup> Texas summarized NO<sub>x</sub> emission trends for Texas EGUs from 1995-2011 and discusses how federal rulemakings, such as CAIR and the CSAPR affected EGU emissions. Lastly, Texas described additional non-EGU control measures and SIPs that reduce NO<sub>x</sub> and VOC emissions within the state.

Texas concluded in its analysis that (based on monitoring data) due to (1) decreases in ozone design values, and (2) existing control measures, emissions from sources within the state

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<sup>6</sup> These states are Arkansas, Louisiana, Oklahoma, and New Mexico.

do not contribute significantly to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state. A copy of the Texas SIP submittal may be accessed online at <http://www.regulations.gov>, Docket No. EPA-R06-OAR-2012-0985.

### **III. The EPA's Evaluation**

As we noted above, the Texas SIP submittal included an analysis of monitoring data, wind patterns, emissions data and emissions controls. The information provided in the Texas analysis is helpful in assessing past air quality and we agree that ozone concentrations have decreased since 2000. However, we disagree with Texas's conclusion concerning interstate transport for the 2008 ozone NAAQS.

Texas limits its discussion of data only to areas designated nonattainment in states that are geographically closest to Texas (Arizona, Arkansas, Colorado, Illinois, Indiana, Louisiana, Mississippi, Missouri, Tennessee, and Wisconsin). This approach is incomplete for two reasons. First, transported emissions may cause an area to measure exceedances of the standard even if that area is not formally designated nonattainment by the EPA. However, Texas only evaluated its potential impact on the nearest designated nonattainment areas in other states without considering potential exceedances in other areas not designated nonattainment. Thus, Texas did not fully evaluate whether emissions from the state significantly contribute to nonattainment in other states.

Second, in remanding CAIR to the EPA in the *North Carolina* decision, the D.C. Circuit explained that the regulating authority must give the "interfere with maintenance" clause of section 110(a)(2)(D)(i)(I) "independent significance" by evaluating the impact of upwind state emissions on downwind areas that, while currently in attainment, are at risk of future

nonattainment, considering historic variability.<sup>7</sup> Texas does not give the “interfere with maintenance” clause of section 110(a)(2)(D)(i)(I) independent significance because its analysis did not attempt to evaluate the potential impact of Texas emissions on areas that are currently measuring clean data, but that may have issues maintaining that air quality.

Furthermore, in addition to being incomplete, the EPA has recently shared new technical information with states to facilitate efforts to address interstate transport requirements for the 2008 ozone NAAQS which contradicts the conclusions of the Texas analysis. The EPA developed this technical information following the same approach used to evaluate interstate transport in CSAPR in order to support the recently proposed Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 80 FR 75706 (December 3, 2015) (“CSAPR Update Rule”). In CSAPR, we used detailed air quality analyses to determine whether an eastern state’s contribution to downwind air quality problems was at or above specific thresholds. If a state’s contribution did not exceed the specified air quality screening threshold, the state was not considered “linked” to identified downwind nonattainment and maintenance receptors and was therefore not considered to significantly contribute to nonattainment or interfere with maintenance of the standard in those downwind areas. If a state exceeded that threshold, the state’s emissions were further evaluated, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary. For the reasons stated below, we believe it is appropriate to use the same approach we used in CSAPR to establish an air quality screening threshold for the evaluation of interstate transport requirements for the 2008 ozone standard.

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<sup>7</sup> 531 F.3d at 910-11 (holding that the EPA must give “independent significance” to each prong of CAA section 110(a)(2)(D)(i)(I)).

In CSAPR, we proposed an air quality screening threshold of one percent of the applicable NAAQS and requested comment on whether one percent was appropriate. The EPA evaluated the comments received and ultimately determined that one percent was an appropriately low threshold because there were important, even if relatively small, contributions to identified nonattainment and maintenance receptors from multiple upwind states. In response to commenters who advocated a higher or lower threshold than one percent, we compiled the contribution modeling results for CSAPR to analyze the impact of different possible thresholds for the eastern United States. The EPA's analysis showed that the one percent threshold captures a high percentage of the total pollution transport affecting downwind states, while the use of higher thresholds would exclude increasingly larger percentages of total transport. For example, at a five percent threshold, the majority of interstate pollution transport affecting downwind receptors would be excluded. In addition, the EPA determined that it was important to use a relatively lower one percent threshold because there are adverse health impacts associated with ambient ozone even at low levels. The EPA also determined that a lower threshold such as 0.5 percent would result in relatively modest increases in the overall percentages of fine particulate matter and ozone pollution transport captured relative to the amounts captured at the one-percent level. The EPA determined that a "0.5 percent threshold could lead to emission reduction responsibilities in additional states that individually have a very small impact on those receptors — an indicator that emission controls in those states are likely to have a smaller air quality impact at the downwind receptor. We are not convinced that selecting a threshold below one percent is necessary or desirable."

In the final CSAPR, we determined that one percent was a reasonable choice considering the combined downwind impact of multiple upwind states in the eastern United States, the health

effects of low levels of fine particulate matter and ozone pollution, and the EPA's previous use of a one percent threshold in CAIR. The EPA used a single "bright line" air quality threshold equal to one percent of the 1997 8-hour ozone standard, or 0.08 ppm. The projected contribution from each state was averaged over multiple days with projected high modeled ozone, and then compared to the one percent threshold. We concluded that this approach for setting and applying the air quality threshold for ozone was appropriate because it provided a robust metric, was consistent with the approach for fine particulate matter used in CSAPR, and because it took into account, and would be applicable to, any future ozone standards below 0.08 ppm. The EPA has subsequently proposed to use the same threshold for purposes of evaluating interstate transport with respect to the 2008 ozone standard in the CSAPR Update Rule.

In 2015 we (1) provided notice of data availability (NODA) for the EPA's updated ozone transport modeling for the 2008 ozone NAAQS for public review and comment (80 FR 46271, August 4, 2015), and (2) proposed the CSAPR Update Rule to address interstate transport with respect to the 2008 ozone NAAQS (80 FR 75706, December 3, 2015). The CSAPR Update Rule would further restrict ozone season NO<sub>x</sub> emissions from EGUs in 23 states, including Texas, beginning in the 2017 ozone season. Our proposal also addresses a 2015 D.C. Circuit court decision that largely upheld CSAPR, but that, among other things, remanded without vacatur the NO<sub>x</sub> ozone-season emission budgets for EGUs in Texas and 10 other states that were established in CSAPR to address the 1997 ozone NAAQS.<sup>8</sup>

The modeling data released in this NODA was also used to support the proposed CSAPR Update Rule. The moderate area attainment date for the 2008 ozone standard is July 11, 2018. In order to demonstrate attainment by this attainment deadline, states will use 2015 through 2017

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<sup>8</sup> *EME Homer City v. EPA*, [795 F.3d 118 (D.C. Cir.2015)] (July 28, 2015).

ambient ozone data. Therefore, the EPA proposed that 2017 is an appropriate future year to model for the purpose of examining interstate transport for the 2008 ozone NAAQS. The EPA used photochemical air quality modeling to project ozone concentrations at air quality monitoring sites to 2017 and estimated state-by-state ozone contributions to those 2017 concentrations. This modeling used the Comprehensive Air Quality Model with Extensions (CAMx version 6.11) to model the 2011 base year, and the 2017 future base case emissions scenarios to identify projected nonattainment and maintenance sites with respect to the 2008 ozone NAAQS in 2017. The EPA used nationwide state-level ozone source apportionment modeling (CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis technique) to quantify the contribution of 2017 base case NO<sub>x</sub> and VOC emissions from all sources in each state to the 2017 projected receptors. The air quality model runs were performed for a modeling domain that covers the 48 contiguous United States and adjacent portions of Canada and Mexico. The NODA and the supporting technical support documents have been included in the docket for this SIP action.

The modeling data released in the NODA and the CSAPR Update Rule are the most up-to-date information the EPA has developed to inform our analysis of upwind state linkages to downwind air quality problems. As discussed in the CSAPR Update Rule proposal, the air quality modeling (1) identified locations in the U.S. where the EPA expects nonattainment or maintenance problems in 2017 for the 2008 ozone NAAQS (i.e., nonattainment or maintenance receptors), and (2) quantified the projected contributions of emissions from upwind states to downwind ozone concentrations at those receptors in 2017 (80 FR 75706, 75720-30, December 3, 2015). Consistent with CSAPR, the EPA proposed to use a threshold of 1 percent of the 2008 ozone NAAQS (0.75 parts per billion) to identify linkages between upwind states and downwind

nonattainment or maintenance receptors. The EPA proposed that eastern states with contributions to a specific receptor that meet or exceed this screening threshold are considered “linked” to that receptor, and were analyzed further to quantify available emissions reductions necessary to address interstate transport to these receptors.

Table 1 is a summary of the air quality modeling results for Texas from Table V.D-1 of the proposed CSAPR Update Rule.<sup>9</sup> As the state’s downwind contribution to proposed nonattainment and maintenance receptors exceeded the threshold, the analysis for the proposal concluded that Texas emissions significantly contribute to nonattainment and interfere with maintenance of the 2008 ozone NAAQS in other states. Texas emissions were linked to eastern nonattainment receptors in Sheboygan, Wisconsin, and to maintenance receptors in Maryland, Michigan, New Jersey, New York, Ohio and Pennsylvania (Tables V.D-2 and V.D-3, 80 FR 75706, 75728-30).<sup>10</sup>

**Table 1. Texas’ Largest Contribution to Downwind Nonattainment and Maintenance Areas (Proposed CSAPR Update Rule)**

<b>2008 Ozone NAAQS</b>	<b>Air Quality Threshold</b>	<b>Largest Downwind Contribution to Nonattainment</b>	<b>Largest Downwind Contribution to Maintenance</b>	<b>Downwind Nonattainment Receptors Located in States</b>	<b>Downwind Maintenance Receptors Located in States</b>
0.075 ppm (75 parts per billion or ppb)	0.75 ppb	2.44 ppb	2.95 ppb	Wisconsin	Maryland, Michigan, New Jersey, New York, Ohio and Pennsylvania

<sup>9</sup> 80 FR 75706, 75727-28.

<sup>10</sup> Tables V.D-2 and V.D-3, 80 FR 75706, 75728-30.

Additionally, Texas emissions were also linked to two projected nonattainment receptors in the Denver, Colorado area, with Texas's largest downwind contribution to those nonattainment receptors being 1.58 parts per billion (ppb).<sup>11</sup> Texas has not provided a demonstration that its SIP is adequate to address interstate transport to the Denver, Colorado receptors. The EPA believes contribution from an individual state equal to or above 1 percent of the NAAQS could be considered significant where the collective contribution of emissions from one or more upwind states is responsible for a considerable portion of the downwind air quality problem regardless of where the receptor is geographically located.<sup>12</sup> In this case, Texas has more than a 2% contribution to receptors in Denver, which we consider significant.

As discussed previously, our modeling and analysis released in our NODA and proposed CSAPR Update Rule is the most up-to-date information for assessing interstate transport of air pollution for the 2008 ozone NAAQS. Analysis of wind patterns, emissions data, and ambient monitoring data as provided in the Texas SIP submittal does not quantify the magnitude of impact from Texas emissions to downwind states. For example, wind patterns can only give an indication of the possibility of transport; emissions data and ambient monitoring data can indicate the potential for air quality problems. The Texas analysis only discusses general ozone season wind patterns as being from the south to the east and the limited potential for transport to Memphis and Baton Rouge. However, the general wind patterns are generally consistent with transport to the impacted receptors in Wisconsin and Colorado, and there are observed winds from the west and northwest that could, on some days, transport pollutants towards other areas, such as Baton Rouge. Downward trends in (1) emissions and (2) observed ozone concentrations can indicate progress towards reducing impact, but do not provide information on the magnitude

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<sup>11</sup> See document EPA-HQ-OAR-2015-0500-0007 in <http://www.regulations.gov>.

<sup>12</sup> 76 FR 48238 (Aug. 8, 2011); 80 FR 75714 (Dec. 3, 2015).

of the remaining impact or the potential benefit from additional emission reductions. Air quality modeling, however, brings together emissions data, atmospheric chemistry and meteorological information that simulate the transport and fate of pollutants and estimate concentrations of pollutants (including ozone) across the modeling domain. Air quality modeling can also provide estimates of upwind impacts by estimating the contribution of a state's emissions to downwind pollutant concentrations. Our modeling and analysis provided the magnitude of impact and show that Texas emissions significantly contribute to ozone concentrations in areas of nonattainment and interfere with maintenance of the 2008 ozone NAAQS in other states.

Texas provided a great deal of information documenting significant emission reductions that have been made throughout the state and particularly in the eastern half of the state between 1990 and 2010. These include reductions from controls on EGUs in East Texas and controls on a variety of NO<sub>x</sub> sources in the 1-hour ozone and 8-hour ozone nonattainment areas of Houston-Galveston-Brazoria, Beaumont-Port Arthur and Dallas-Fort Worth. These controls have resulted in significant reductions in ozone levels in Texas and undoubtedly have reduced the amount of transported pollution to other states. However, these reductions were largely put in place to address the 1-hour ozone NAAQS, and as a result, their compliance dates, and therefore the emission reductions achieved through these measures, predate and were therefore accounted for in the EPA's modeling baseline of 2011 for the 2008 ozone NAAQS. Accordingly, the most recent technical analysis available to the EPA contradicts Texas's conclusion that the state's SIP contains adequate provisions to address interstate transport as to the 2008 ozone standard. Furthermore, Texas did not demonstrate how these rules and data for a less stringent standard provide sufficient controls on emissions to address interstate transport for the 2008 ozone NAAQS. Despite the substantial reductions in Texas, we have subsequently published

information and proposed an update to CSAPR that addresses the 2008 ozone NAAQS that includes Texas's cited rules and demonstrates Texas still has an interstate impact on other states.

Among the emissions reductions cited by Texas in its SIP, Texas cites its participation in CAIR as a control measure that results in control of NO<sub>x</sub> emissions within the state. Texas notes that under CAIR, Texas EGUs were not included in the ozone season NO<sub>x</sub> emissions trading program, but were subject to the annual NO<sub>x</sub> emissions trading program. The CAIR ozone season NO<sub>x</sub> emissions trading program was intended to address interstate transport of air pollution for the 1997 ozone NAAQS. The CAIR annual NO<sub>x</sub> emissions trading program, along with the annual sulfur dioxide (SO<sub>2</sub>) trading program, was intended to address interstate transport of air pollution for the 1997 fine particulate matter (PM<sub>2.5</sub>) NAAQS.

Texas also noted that: (1) a 2008 court decision (the *North Carolina* decision) directed the EPA replace CAIR, but kept it in place temporarily; (2) the EPA replaced CAIR with CSAPR; (3) CSAPR included Texas EGU budgets for ozone-season NO<sub>x</sub> emissions, annual NO<sub>x</sub> emissions and annual SO<sub>2</sub> NO<sub>x</sub> emissions to address interstate transport of air pollution for the 1997 ozone NAAQS, the 1997 annual PM<sub>2.5</sub> NAAQS and the 2006 24-hour PM<sub>2.5</sub> NAAQS; and (4) in August 2012, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued a decision vacating CSAPR and requiring continued implementation of CAIR until the EPA develops a replacement. Therefore, Texas concluded that CAIR remains a federally enforceable requirement.

Subsequent to Texas's submission of its SIP, On April 29, 2014, the U.S. Supreme Court reversed that D.C. Circuit decision vacating CSAPR and remanded the case to the D.C. Circuit for further proceedings. On October 23, 2014, the D.C. Circuit granted our motion to lift the judicial stay on CSAPR and delay compliance deadlines by three years. Consistent with the

Court's order we issued an interim final rule amending CSAPR so that compliance could begin in an orderly manner on January 1, 2015 (79 FR 71663, December 3, 2014), replacing CAIR. On July 28, 2015, the D.C. Circuit issued its decision on the issues raised on remand from the Supreme Court. The court denied all of petitioners' facial challenges to CSAPR, but remanded several emissions budgets to the EPA for reconsideration.<sup>13</sup> A final rule making the revised CSAPR implementation schedule permanent was issued on March 14, 2016.<sup>14</sup>

Accordingly, CAIR implementation ended in 2014 and CSAPR implementation began in 2015. States and the EPA are no longer implementing the CAIR trading programs. Thus, it is no longer appropriate for states to rely on CAIR to satisfy emission reduction obligations. Moreover, as indicated above, Texas's SIP addresses interstate transport obligations for a different and more stringent standard (the 2008 ozone NAAQS) and it is not sufficient to merely cite evidence of compliance with older programs such as CAIR or measures implemented for prior ozone NAAQS as a means for satisfying interstate transport obligations for the 2008 ozone NAAQS.

The EPA is proposing to disapprove the Texas SIP for CAA section 110(a)(2)(D)(i)(I) requirements. As explained above, the Texas analysis does not adequately demonstrate that the SIP contains provisions prohibiting emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS. Moreover, the EPA's most recent

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<sup>13</sup> As to Texas in particular, the court remanded without vacatur the state's phase 2 SO<sub>2</sub> annual emissions budget and the phase 2 ozone-season NO<sub>x</sub> emissions budget for reconsideration. The court concluded that these budgets resulted in over-control of sources in Texas with respect to the air quality concerns to which Texas was linked in our air quality modeling. As stated above, our CSAPR update proposal for the 2008 ozone NAAQS responds to the court remand of the NO<sub>x</sub> ozone-season emission budgets for EGUs in Texas that were established for the 1997 ozone NAAQS.

<sup>14</sup> 81 FR 13275 (March 14, 2016)

modeling indicates that emissions from Texas are projected to significantly contribute to downwind nonattainment and maintenance receptors in other states.<sup>15</sup>

#### **IV. Proposed Action**

We propose to disapprove the portion of a December 13, 2012 Texas SIP submittal pertaining to CAA section 110(a)(2)(D)(i)(I), the interstate transport of air pollution which will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states. The EPA requests comment on our evaluation of Texas's interstate transport SIP.

Pursuant to CAA section 110(c)(1), disapproval will establish a 2-year deadline for the EPA to promulgate a FIP for Texas to address the requirements of CAA section 110(a)(2)(D)(i) with respect to the 2008 ozone NAAQS unless Texas submits and we approve a SIP that meets these requirements. Disapproval does not start a mandatory sanctions clock for Texas pursuant to CAA section 179 because this action does not pertain to a part D plan for nonattainment areas required under CAA section 110(a)(2)(I) or a SIP call pursuant to CAA section 110(k)(5).

#### **V. Statutory and Executive Order Reviews**

##### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

##### *B. Paperwork Reduction Act (PRA)*

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<sup>15</sup> Texas and others interested parties have provided comments on both the NODA and proposed CSAPR Update Rule. See Docket No. EPA-HQ-OAR-2015-0500 at <http://www.regulations.gov>. We will consider these comments in final rulemaking to CSAPR Update Rule. Even absent this data, Texas's SIP failed to adequately address the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS.

This proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may

disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely proposes to disapprove a SIP submission as not meeting the CAA.

*H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Nitrogen dioxide, Volatile organic compounds.

Dated: April 4, 2016.

**Ron Curry,**

*Regional Administrator, Region 6.*

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